



EMPLOYMENT TRIBUNALS

Claimant: Mr G Ksiazek

Respondent: Grand Union Pub Company Limited

HEARD AT: Cambridge: 24 June 2021

BEFORE: Employment Judge Michell

REPRESENTATION: For the Claimant: In person, assisted by daughter, Eliza Ksiazek , and interpreter, Miss M. Teles
For the Respondent: Mrs Maxine Howell (director)

WRITTEN REASONS

Introduction

1. At today's hearing, which was listed for a final hearing, I dismissed the claim on the basis that the tribunal did not have jurisdiction to hear it because it was brought out of time. The claimant asked me for written reasons. They are set out below.

Reasons

2. The claimant worked as a chef for the respondent from (on his case) 1 September 2018 or (on the respondent's case) 22 April 2015. His claim was presented to the tribunal on 30 October 2020. In it, the claimant asserts that he was unfairly dismissed. According to him, and the effective date of termination was 14 March 2020. He also claims notice pay, holiday pay, and arrears of pay relating to the months of December 2019 to March 2020.

3. Prior to bringing the claim, the claimant undertook early conciliation, 'Day A' for which was 9 October 2020, and 'Day B', 15 October 2020.
4. As I explained to the claimant, the chronology was problematic for him. Almost 7 months passed between the termination date and his approach to ACAS. Thereafter, over two weeks passed before he presented his claim.
5. I explained to the claimant the 'reasonable practicability' test which applies in such cases.
6. The burden of proof for establishing jurisdiction is on a claimant in showing that it was not reasonably practicable to bring the claim within the primary limitation period, and (if they pass that first hurdle) that any delay thereafter was reasonable. See **Porter v Bandridge Ltd** 1978 1 WLR 1145 (p.1150). Time limits should be adhered to strictly. See **Robertson v Bexley Community Centre** 2003 EWCA CIV 576. In **Palmer and Saunders v Southend on Sea Borough Council** [1984] 1 IRLR 119, the Court of Appeal suggested that the test is one of "reasonable feasibility". Factors that can be taken into account will vary from case-to-case. Amongst other things, ignorance of the right to bring a claim, or of the time limit or procedure for making a claim, does not *per se* satisfy the 'reasonable practicability' test. The Tribunal must be satisfied that the Claimant's ignorance of the relevant time limit was reasonable.
7. With the assistance of his daughter and Ms Teles, the claimant and his daughter explained to me as follows:
 - a. His wife fell ill in late 2019, and on 5 January 2020 had an operation for a brain tumour.
 - b. Thereafter, she was at home convalescing (whilst he still worked for the respondent) and in March 2020 she commenced a course of radiotherapy. That course lasted for about three months. The sessions took place about

twice a week. He and/or his daughter had to be with his wife at home for much of that time.

- c. Once the radiotherapy had finished, his wife started to receive chemotherapy. That treatment is still ongoing.
- d. The Claimant started chef work elsewhere on 1 September 2020. The work is full-time, albeit he has had some time off in order to assist his wife.
- e. His daughter is computer literate, and has good English (though he does not). She assisted him in respect of his claim. She sensibly accepted that she could “probably” have done further research into time limits in respect of tribunal claims for her father.
- f. The claimant had some very limited legal advice, but it did not deal with the question of time limits. His daughter approached ACAS for him on March 2020, but they were “not much help” No further approach was made to ACAS until about 7 months later.

8. Regrettably, sympathetic though I am, the above factors do not persuade me that it was not reasonably practicable for the claimant to bring the claim within the primary limitation period, or that the delay thereafter was reasonable. Even if the claimant’s wife’s illness can account for delay until, say, June 2020 -I am not convinced it can- I do not think that the delay thereafter was reasonable. Most obviously, if the claimant was in fit state to return to full-time work on 1 September 2020 he could and, in my judgment should, have taken steps to approach ACAS and present his claim by about that time. The delay between Day B and presentation of the claim was also not explained.

9. Finally, I should say that there has apparently been some difficulty between the parties as regards provision to the claimant of wage slips for December 2019 to March 2020, his P45, and his P60. Prior to dismissing the claim, I directed the claimant to provide the respondent in the next 7 days with details as to how much he was paid by the respondent into his bank account during those months. Within 7 days thereafter, the respondent should provide the claimant with payslips for those months

showing the correct figures, together with the P60 and P45. Hopefully, that will be some assistance.

Employment Judge Michell

Date: 24 June 2021

Sent to the parties on:

.....2/8/21

For the Tribunal:

